

## § 950.25

## 10 CFR Ch. III (1–1–10 Edition)

Administrator shall issue a Claim Determination identifying those claimed costs deemed to be allowable based on an evaluation of:

(1) The duration of covered delay, taking into account contributory or concurrent delays resulting from exclusions from coverage as established by the Claims Administrator in accordance with § 950.22;

(2) The covered costs associated with covered delay, including an assessment of the sponsor's due diligence in mitigating or ending covered costs, as set forth in § 950.23;

(3) Any adjustments to the covered costs, as set forth in § 950.26; and

(4) Other information as necessary and appropriate.

(b) The Claim Determination shall state the Claims Administrator's determination that the claim shall be paid in full, paid in an adjusted amount as deemed allowable by the Claims Administrator, or rejected in full.

(c) Should the Claims Administrator conclude that the sponsor has not supplied the required information in the Certification of Covered Costs or any supporting documentation sufficient to allow reasonable verification of the duration of the covered delay or covered costs, the Claims Administrator shall so inform the sponsor and specify the nature of additional documentation requested, in time for the sponsor to supply supplemental documentation and for the Claims Administrator to issue the Claim Determination.

(d) Should the Claims Administrator find that any claimed covered costs are not allowable or otherwise should be considered excluded costs under the Standby Support Contract, the Claims Administrator shall identify such costs and state the reason(s) for that decision in writing. A determination by the Claims Administrator that an event is an exclusion or that the sponsor has not provided complete or timely information relevant to the exclusion as specified in § 950.22 shall provide a basis for the Claims Administrator to find covered costs are not allowable. If the parties cannot agree on the covered costs, they shall resolve the dispute in accordance with the requirements in subpart D of this part.

### § 950.25 Calculation of covered costs.

(a) The Claims Administrator shall calculate the allowable amount of the covered costs claimed in the Certification of Covered Costs as follows:

(1) *Costs covered through Program Account.* The principal or interest on any debt obligation financing the advanced nuclear facility for the duration of covered delay to the extent the debt obligation was included in the calculation of the loan cost; and

(2) *Costs covered by Grant Account.* The incremental costs calculated for the duration of the covered delay. In calculating the incremental cost of power, the Claims Administrator shall consider:

(i) *Fair Market Price.* The fair market price may be determined by the lower of the two options: The actual cost of the short-term supply contract for replacement power, purchased by the sponsor, during the period of delay, or for each day of replacement power by its day-ahead weighted average index price in \$/MWh at the hub geographically nearest to the advanced nuclear facility as posted on the previous day by the Intercontinental Exchange (ICE) or an alternate electronic marketplace deemed reliable by the Department. The daily MWh assumed to be covered is no more than its nameplate capacity multiplied by 24 hours; multiplied by the capacity-weighted U.S. average capacity factor in the previous calendar year, including in the calculation any and all commercial nuclear power units that operated in the United States for any part of the previous calendar year; and multiplied by the average of the ratios of the net generation to the grid for calculating payments to the Nuclear Waste Fund to the nameplate capacity for each nuclear unit included. In addition, the Claims Administrator may consider "fair market price" from other published indices or prices at regional trading hubs and bilateral contracts for similar delivered firm power products and the costs incurred, including acquisition costs, to move the power to the contract-specified point of delivery, as well as the provisions of the covered contract regarding replacement power costs for delivery default; and

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(ii) *Contractual price of power.* The contractual price of power shall be determined as the daily weighted average price in equivalent \$/MWh under a contractual supply agreement(s) for delivery of firm power that the sponsor entered into prior to any covered event. The daily MWh assumed to be covered is no more than the advanced nuclear facility's nameplate capacity multiplied by 24 hours; multiplied by the capacity-weighted U.S. average capacity factor in the previous calendar year, including in the calculation any and all commercial nuclear power units that operated in the United States for any part of the previous calendar year; and multiplied by the average of the ratios of the net generation to the grid for calculating payments to the Nuclear Waste Fund to the nameplate capacity for each nuclear unit included.

### § 950.26 Adjustments to claim for payment of covered costs.

(a) *Aggregate amount of covered costs.* The sponsor's aggregate amount of covered costs shall be reduced by any amounts that are determined to be either excluded or not covered.

(b) *Amount of Department share of covered costs.* The Department share of covered costs shall be adjusted as follows:

(1) *No excess recoveries.* The share of covered costs paid by the Department to a sponsor shall not be greater than the limitations set forth in § 950.27(d).

(2) *Reduction of amount payable.* The share of covered costs paid by the Department shall be reduced by the appropriate amount consistent with the following:

(i) *Excluded claims.* The Department shall ensure that no payment shall be made for costs resulting from events that are not covered under the contract as specified in § 950.14; and

(ii) *Sponsor due diligence.* Each sponsor shall ensure and demonstrate that it uses due diligence to mitigate, shorten, and to end the covered delay and associated costs covered by the Standby Support Contract.

### § 950.27 Conditions for payment of covered costs.

(a) *General.* The Department shall pay the covered costs associated with a

Standby Support Contract in accordance with the Claim Determination issued by the Claims Administrator under § 950.24 or the Final Claim Determination under § 950.34, provided that:

(1) Neither the sponsor's claim for covered costs nor any other document submitted to support the underlying claim is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(2) The losses submitted for payment are within the scope of coverage issued by the Department under the terms and conditions of the Standby Support Contract as specified in subpart B of this part; and

(3) The procedures specified in this subpart have been followed and all conditions for payment have been met.

(b) *Adjustments to Payments.* In the event of fraud or miscalculation, the Department may subsequently adjust, including an adjustment obligating the sponsor to repay any payment made under paragraph (a) of this section.

(c) *Suspension of payment for covered costs.* If the Department paid or is paying covered costs under paragraph (a) of this section, and subsequently makes a determination that a sponsor has failed to meet any of the requirements for payment specified in paragraph (a) of this section for a particular covered cost, the Department may suspend payment of covered costs pending investigation and audit of the sponsor's covered costs.

(d) *Amount payable.* The Department's share of compensation for the initial two reactors is 100 percent of the covered costs of covered delay but not more than the coverage in the contract or \$500 million per contract, whichever is less; and for the subsequent four reactors, not more than 50 percent of the covered costs of the covered delay but not more than the coverage in the contract or \$250 million per contract, whichever is less. The Department's share of compensation for the subsequent four reactors is further limited in that the payment is for covered costs of a covered delay that occurs after the initial 180-day period of covered delay.